

Office of Chief Counsel  
Internal Revenue Service  
**memorandum**

CC:SER:DEM:BAL:TL-N-532-00  
LEChan

date:

to: District Director, Delaware-Maryland District  
Chief, Examination Division  
Attn: John Tuzynski

from: District Counsel, Delaware-Maryland

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subject: [REDACTED]

DISCLOSURE STATEMENT

This advice constitutes return information subject to I.R.C. § 6103. This advice contains confidential information subject to attorney-client and deliberative process privileges and if prepared in contemplation of litigation, subject to the attorney work product privilege. Accordingly, the Examination or Appeals recipient of this document may provide it only to those persons whose official tax administration duties with respect to this case require such disclosure. In no event may this document be provided to Examination, Appeals, or other persons beyond those specifically indicated in this statement. This advice may not be disclosed to taxpayers or their representatives.

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**DISCUSSION**

This memo is written in response to your request for advice as to:

1) whether a Form 4810 (Request for Prompt Assessment) signed by the taxpayer's accountant was valid.

2) whether the dissolution requirement has been met by the taxpayer in order for it to be entitled to prompt assessment

pursuant to I.R.C. § 6501(d).

**Facts:**

The taxpayer, [REDACTED], a Maryland corporation, has been a subsidiary of [REDACTED] since some time in [REDACTED]. [REDACTED] filed a full-year consolidated return for [REDACTED], of which [REDACTED] was a member. The [REDACTED] consolidated return was filed in [REDACTED]; an amended return was dated [REDACTED] but stamped received on [REDACTED] by the Philadelphia Service Center. [REDACTED], accountant for both [REDACTED] and [REDACTED], filed Form 4810 on [REDACTED] (Request for Prompt Assessment) for [REDACTED] and [REDACTED] for the [REDACTED] tax year, signing the form as POA. The State of Maryland Department of Assessments and Taxation (MD DAT) forfeited [REDACTED] corporate charter on [REDACTED] for failure to file personal property reports. The following Forms 2848 (Power of Attorney) are on file for both [REDACTED] And [REDACTED]:

- 1) [REDACTED] for tax years [REDACTED] dated [REDACTED] and noting no specific authorized acts;
- 2) [REDACTED] for tax years [REDACTED] dated [REDACTED] and noting no specific authorized acts;
- 3) [REDACTED] for tax years [REDACTED] dated [REDACTED] and noting that [REDACTED] was specifically authorized to sign Form 1139 or [REDACTED], Form 1120X for [REDACTED], and Form 872 for [REDACTED] only with respect to the [REDACTED] refund for [REDACTED];
- 4) [REDACTED] for tax years [REDACTED] dated [REDACTED] and noting that [REDACTED] was specifically authorized to sign Form 1139 for [REDACTED], Form 1120X for [REDACTED], and Form 872 for [REDACTED] only with respect to the [REDACTED] refund for [REDACTED];

**Relevant law:**

I.R.C. § 6501(a) establishes a general 3-year period of limitations for assessment after the return is filed.

I.R.C. § 6501(d) provides that in the case of a request for prompt assessment, tax will be assessed within 18 months after written request therefor (filed in such manner and form as prescribed by regulation) by a corporation who meets the

following requirements: 1) the written request provides notice that the corporation contemplates dissolution at or before the expiration of the 18-month period, the dissolution is in good faith begun before the expiration of the 18-month period, and the dissolution is completed; and 2) the written request provides notice that a dissolution has in good faith been begun, or a dissolution has been completed at the time the written request is made.

Treas. Reg. § 301.6501(d)-1 requires the written request to be filed by the executor, administrator, or other fiduciary representing the estate of the decedent, or the corporation, or fiduciary representing the dissolved corporation, as the case may be, with the district director for the district in which such return was filed, specify the types of tax and tax periods for which the prompt assessment is requested, and clearly indicate that it is a request for prompt assessment under the provisions of I.R.C. § 6501(d).

I.R.C. § 7701(a)(6) defines a fiduciary as a guardian, trustee, executor, administrator, receiver, conservator, or any person acting in any fiduciary capacity for any person. Treas. Reg. § 301.7701-6(b) provides in relevant part that a fiduciary is a term that applies to persons occupying positions of peculiar confidence toward others, such as trustees, executors, and administrators.

I.R.C. § 6061 provides that any return, statement, or other document required to be filed by a taxpayer must be signed in accordance with forms or regulations prescribed by the Service.

I.R.C. § 6062 states that a corporation's return with respect to income must be signed by the president, vice-president, treasurer, assistant treasurer, chief accounting officer, or any other officer duly authorized so to act.

Treas. Reg. § 601.504 provides that the filing of a power of attorney (POA) does not authorize the recognized representative to sign a tax return on behalf of a taxpayer unless such act meets the requirements of Treas. Reg. § 1.6012-1(a)(5) and is specifically authorized in the power of attorney. Treas. Reg. § 1.6012-1(a)(5) allows an agent of a taxpayer to make the taxpayer's return in the following situations: 1) the taxpayer by reason of disease or injury is unable to make it; 2) the taxpayer by reason of continuous absence from the United States for a period of at least 60 days prior to the statutory filing date; and 3) the taxpayer requests permission in writing of the district director for the district in which is located the taxpayer's residence or principal place of business, and the

district director determines that good cause exists for permitting the return to be so made. In all cases, the return must be accompanied by a power of attorney authorizing the agent to represent the taxpayer in making, executing, or filing the return.

Md. Code Ann. § 3-503(c)(1999) provides that, immediately after September 30 of each year, MD DAT will certify a list of every Maryland corporation which has not filed an annual personal property report.

Md. Code Ann. § 3-503(d)(1999) provides that, after the lists are certified, MD DAT will issue a proclamation declaring the charters of the corporations are forfeited, and the powers conferred by law on the corporations are inoperative, null, and void as of the date of the proclamation, without proceedings of any kind.

Md. Code Ann. § 3-515(a)(1999) provides that, when the charter of a Maryland corporation has been forfeited, until a court appoints a receiver, the corporation's directors become the trustees of its assets for purposes of liquidation. An organization whose charter is forfeited is not legally in existence as a corporation and cannot function as a corporation. Atlantic Mill & Lumber Realty Co. v. Keefer, 20 A.2d 178 (1941).

#### **Application of the law to the facts of the instant case:**

##### Corporate dissolution:

As noted supra, [REDACTED] ceased to exist on [REDACTED], the date its charter was forfeited by the Maryland Department of Assessments and Taxation. [REDACTED] charter forfeiture occurred after the Form 4810 was filed on [REDACTED]. Therefore, [REDACTED] was effectively dissolved on [REDACTED]; as such, the dissolution requirement pursuant to I.R.C. § 6501(d) was met. Assuming the taxpayer met all other requirements of I.R.C. § 6501(d), including a valid signature on the Form 4810, the taxpayer should be entitled to prompt assessment.

##### Properly completed Form 4810:

Neither Treas. Reg. § 301.6501(d) nor the instructions to Form 4810 specify who has authority to sign Form 4810 for the corporation. However, § 601.504 of the IRS Statement of Procedural Rules provides that a power of attorney is required for representation, waiver, consent, closing agreement, and the authority to receive a refund check. In addition, consistent with I.R.C. § 6062 and Treas. Reg. §§ 601.504 and 1.6012-1(a)(5),

the Rules provide that the filing of a power of attorney does not authorize a representative to sign a tax return on the taxpayer corporation's behalf unless the act is permitted under the Code and regulations thereunder, and specifically authorized in the power of attorney.

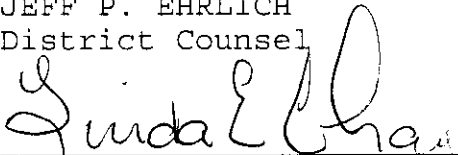
A Request for Prompt Assessment is not a return. Therefore, if a valid power of attorney was filed, then the Form 4810 for [REDACTED] for tax year [REDACTED] signed by [REDACTED], the representative, is arguably a valid request. Based on the information provided, although there is no power of attorney for [REDACTED] for tax year [REDACTED], there is a power of attorney for [REDACTED] for tax year [REDACTED]. Generally, the common parent of a consolidated group acts as the sole agent for each member subsidiary in all matters relating to the tax liability for that year. Treas. Reg. § 1.1502-77(a). Therefore, [REDACTED] acting as [REDACTED]'s representative, could arguably act for [REDACTED]. However, the issue of whether a representative of the parent corporation can properly sign a Form 4810 on behalf of the subsidiary is not settled, and Field Service Advice (FSA) could be pursued at your request.

#### CONCLUSION

Aside from the issue of whether the representative of [REDACTED] (the parent corporation) can properly sign a Form 4810 on behalf of [REDACTED] (the subsidiary), the Form 4810 relating to [REDACTED] for tax year [REDACTED] signed by the taxpayer's accountant was valid. In addition, corporate dissolution of [REDACTED] occurred for the purpose of meeting the requirements of I.R.C. § 6501(d). If you have further questions, please contact Linda E. Chan at (410) 962-9578.

JEFF P. EHRLICH  
District Counsel

By:

  
LINDA E. CHAN  
Attorney